



*The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.*

## CHAPTER 6—ENVIRONMENTAL

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## **CHAPTER 6—ENVIRONMENTAL**

### **6.1 Introduction**

The subrecipient is responsible for compliance with federal environmental review requirements. This chapter provides a summary and basic understanding of the [HUD Environmental regulation process](#) (24 CFR Part 58) (see [Resources—Resource 6.1](#) at the end of the chapter). Periodic updates may be provided by HUD environmental compliance staff. CDBG-DR and/or CDBG-MIT subrecipient, and personnel completing the environmental review should be familiar with all state and federal environmental requirements along with the resources and forms found on the HUD Exchange—Environmental Review website (see [Resources—Resource 6.2](#) at the end of the chapter) and should contact their GLO-CDR Grant Manager and/or GLO-CDR Environmental staff to request technical assistance.

HUD regulations use the term Responsible Entity (RE) to refer to the unit of government responsible for meeting environmental review requirements, which includes the CDBG-DR and/or CDBG-MIT subrecipient. This means the subrecipient is responsible for completing the environmental review, with or without assistance from a third party, and certifying the results. The RE must designate a Certifying Officer Under the terms of the certification required by Sec. 58.71, a REs certifying officer is the “responsible Federal official” as that term is used in section 102 of NEPA and in statutory provisions cited in Sec. 58.1(b). This person is the chief elected official (e.g., County judge or City mayor), chief executive official, or other official designated by formal resolution of the governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all federal, state, and local environmental requirements have been followed. This function may not be assumed by administering agencies or consultants. The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in Sec. 58.5. The Certifying Officer must also: (a) represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and (b) ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient’s program.

GLO-CDR will monitor the subrecipient’s compliance with HUD environmental review requirements. The GLO-CDR Regulatory Oversight team may choose to conduct additional compliance spot checks on sections of the subrecipients environmental review records (ERRs) prior to issuing the Authority to Use Grant Funds (AUGF); however, this is neither a guaranteed service nor a federal requirement. As such, GLO is not responsible for any inaccuracies in the ERR and should the ERR fail to meet federal/state requirements, including applicable Federal Register requirements, the RE is financially responsible for the oversight and any corrective action required. If the subrecipient is unsure how to proceed, contact your GLO-CDR Grant Manager or GLO-CDR Environmental staff.



For important HUD environmental regulations, refer to 24 CFR Part 58 (see [Resources—Resource 6.3](#) at the end of the chapter).

## **6.2 Basis of Environmental Review**

Basics of Environmental Review
<ol style="list-style-type: none"><li>1. What is there now?</li><li>2. What will be there when the project is complete?</li><li>3. How will this be accomplished?</li></ol>



An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for all HUD-assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users. Not every project is subject to a full environmental review (e.g., every project's environmental impact must be examined, but the extent of this examination varies by action), but every project must be in compliance with the 24 CFR 58, [National Environmental Policy Act \(NEPA\)](#) (see [Resources—Resource 6.4](#) at the end of the chapter), and other related Federal and state environmental laws.

## **6.3 Timing of the Environmental Review & Choice Limiting Actions**

An important concept under environmental regulation is the timing of the environmental review. An environmental review must be performed before any funds, regardless of source, are committed on an activity or a project. No activity or project may be undertaken if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives (24 CFR 58.22(a)). This prohibition on committing funds to “choice-limiting actions” physical activity, includes acquisition, rehabilitation, and construction, as well as contracting for any of these actions. 24 CFR 58.22(a) further expands to state that neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in § 58.1(b) on an activity or project until HUD or the state has approved the recipient's request for release of funds (RROF) and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. Refer to the [GLO-CDR Policy Memo on Choice Limiting Activities](#) for additional information (see [Resources—Resource 6.5](#) at the end of the chapter).



Anytime there is a change in a previously approved project's scope of work, regardless of magnitude, the re-evaluation process in [24 CFR 58.47](#) (see [Resources](#)—Resource 6.6 at the end of the chapter) must be followed prior to any work being initiated or funded. If a RE fails to comply with 24 CFR 58.47 and the GLO Project Reevaluation Process, a choice limiting action as described in 24 CFR 58.22(a) may have occurred. Please refer to the [GLO-CDR Regulatory Oversight website](#) for the [Policy Memo on Project Re-evaluations](#) (see [Resources](#)—Resource 6.7 and Resource 6.8 at the end of the chapter).

Responsible Entities (RE) are required to complete their environmental reviews, Requests for Release of Funds (RROFs) and clearance-related paperwork before:

- Any commitment of CDBG-DR funds for activities; and
- Any commitment of non-CDBG-DR funds that would have an adverse environmental impact or limit the choice of alternative;
- And when a previously approved project's scope of work changes and a project re-evaluation per 24 CFR 58.47 is required.

A party may begin a project in good faith as a private project and is not precluded from later deciding to apply for federal assistance. If the choice-limiting action was undertaken prior to the resolution authorizing submittal of the CDBG-DR application, the activity that was started is not required to be suspended. However, when a unit of local government applies for CDBG-DR funding, it must cease further choice-limiting actions (including additional commitment of funds) on the project until the environmental review process is complete. Please contact the GLO-CDR Grant Manager or Environmental staff if the preceding applies to your project.

### **6.3.1 Option Contracts for Purchase of Property**

A contract to purchase property for a CDBG-DR project before the environmental review is completed is considered a “choice limiting action” and must be avoided until after the environmental review process is completed. However, an option contract is one action that may be taken beforehand that might conclude in acquisition once the environmental review process is complete. An option contract is a useful tool for subrecipient to obtain site control while allowing time to complete the environmental review.

Option contracts may be used to gain site control of any type of property, including commercial, industrial, residential for any proposed activity or reuse, including demolition, new construction, and conversion of use, so long as it specifically is contingent of environmental clearance.

A real estate option contract or agreement is a legal agreement between the potential buyer of real property and the owner of that property. The real estate option agreement gives the



potential buyer the exclusive right to buy the property at a specific price within a specific time period. The option agreement does not impose any obligation upon the potential buyer to purchase the property. The option agreement does obligate the seller to sell at the specified price if the potential buyer exercises the option to buy in the manner described in the contract.

HUD's regulations at 24 CFR 58.22(d) allow for an option agreement for any project prior to the completion of the environmental review when the following requirements are met:

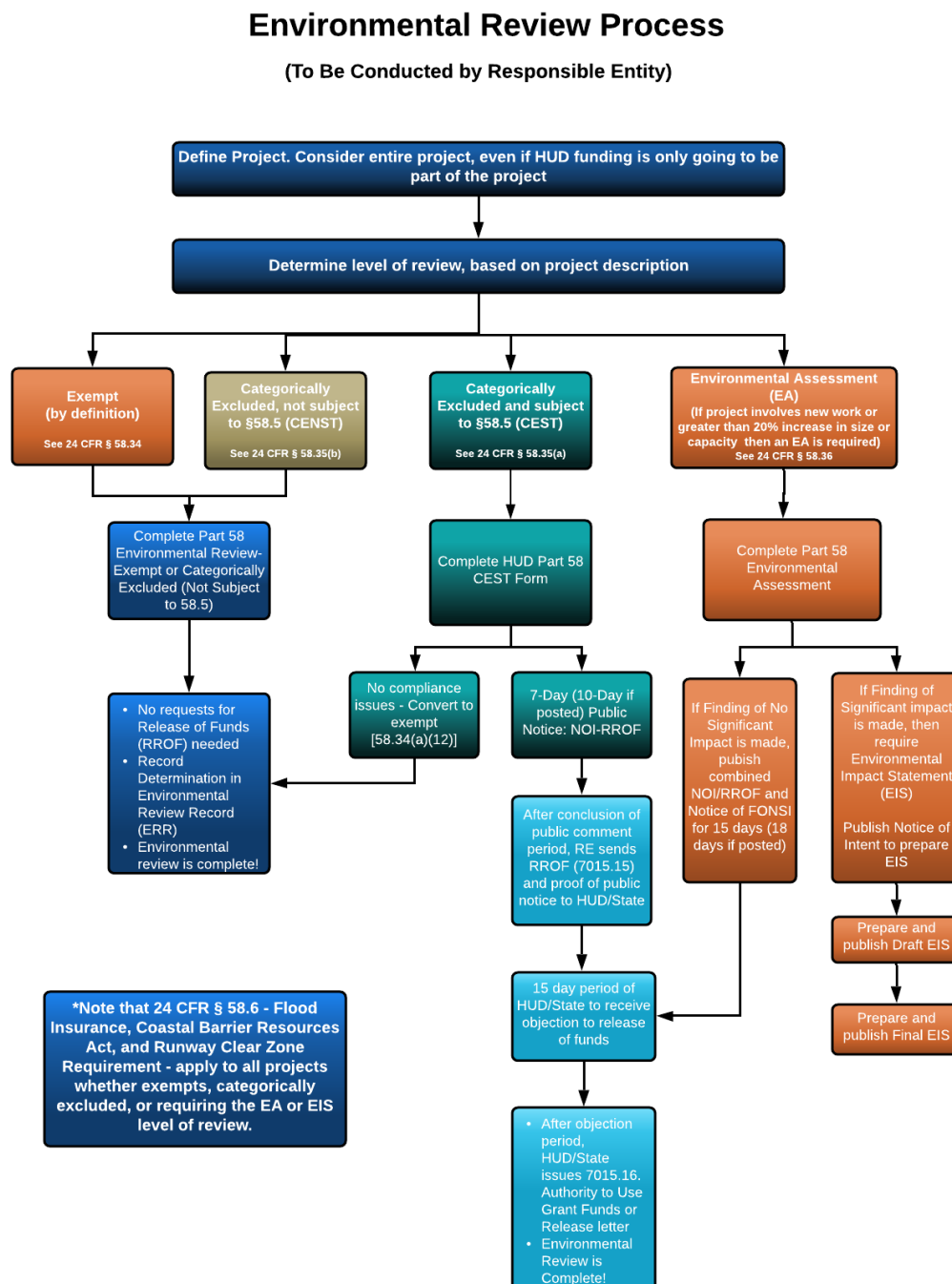
- (1) the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58; and
- (2) the cost of the option is a nominal portion of the purchase price.

The provision allows flexibility regarding the term "nominal" and any reasonable interpretation is acceptable. For instance, it is reasonable to conclude that the nominal amount for option contracts will vary depending upon the local real estate market and the purchase price. Refer to the HUD website for the August 26, 2011 guidance memo titled "Guidance on Options and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible Entity under 24 CFR 58" for additional information.



## 6.4 Environmental Review Process

The following illustration provides a basic overview of the environmental review process:



The HUD environmental review is designed to produce program-specific environmental review procedures in a program that can vary greatly in terms of scope of work.



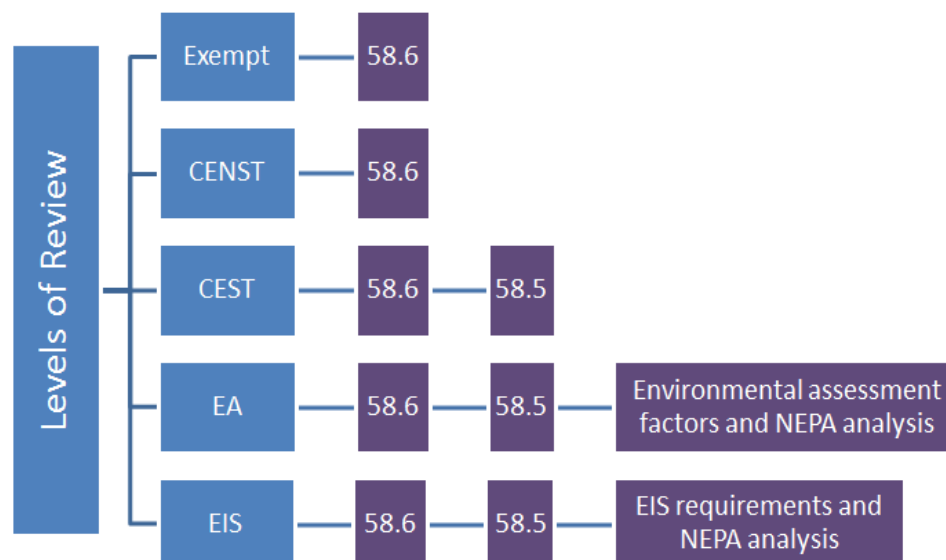
### 6.4.1 Levels of Review

The RE should take adequate time to clearly establish the scope of work and project description prior to initiating the environmental review. Once the scope of the project is known you can determine the appropriate level of environmental review. Accurate scoping, project description and project aggregation are critical success factors.

Project Aggregation, as defined in 24 CFR 58.32, requires the RE to group together, and evaluate as a single project, all individual activities which are related either on a geographical or functional basis or are logical parts of a composite of contemplated actions. The purpose of project aggregation is to adequately analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions (see 40 CFR 1508.25(a)). The RE may choose:

- functional aggregation when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions;
- geographic aggregation when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities);
- or a combination of aggregation approaches, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

24 CFR 58 reviews may be subject to the requirements of 24 CFR 58.6, 24 CFR 58.5, environmental assessment factors, and the analysis under the National Environmental Policy Act. See the chart below for a breakdown of which components are required for each type of review. There are five levels of review as depicted below and discussed in the following pages:





## **24 CFR 58.34 Exempt Activities**

Certain activities are by their nature highly unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review. Listed below are examples which may be exempt from environmental review:

- Environmental and other studies;
- Information and financial services—Administrative and management activities; Engineering and design costs;
- Interim assistance (emergency) activities if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of disasters or imminent threats to public safety or those resulting from physical deterioration;
- Public service activities that will not have a physical impact or result in any physical changes;
- Inspections and testing of properties for hazards or defects;
- Purchase of tools or insurance;
- Technical assistance or training—Payment of principal and interest on loans made or guaranteed by HUD;
- Any of the categorically excluded activities subject to Part 58.5 (as listed in 58.35(a)) provided there are no circumstances which require compliance with any other federal laws and authorities listed at Part 58.5 of the regulations.

For complete details refer to the environmental regulations.

Projects that are or become exempt (such as emergency/disaster under 24 CFR 58.34) must not be located in certain areas. These areas require review of specific elements included in the Categorical Exclusion and Environmental Assessment levels of review. Refer to [HUD Memo 12-11-2012](#) (see [Resources](#)—Resource 6.9 at the end of the chapter).

These locations are:

- a floodplain (for structures that include walls and a roof);
- a known critical habitat for endangered species;
- a historic property; or
- a known hazardous site.





A HUD Certificate of Exemption should be completed with each subrecipient application for funding so that administration and engineering activities can move forward.

***24 CFR 58.35(b) Categorically Excluded, Not Subject To §58.5 (CENST)***

The following activities, listed at 24 CFR Part 58.35(b), have been determined to be categorically excluded from NEPA requirements and are not subject to 24 CFR 58.5 compliance determinations.

- Tenant based rental assistance;
- Supportive services including but not limited to health care, housing services, permanent housing placement, short term payments for rent/mortgage/utility costs, and assistance in gaining access to local state and federal government services and services;
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs;
- Economic development activities including but not limited to equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;
- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy downs and similar activities that result in the transfer of title to a property; and
- Affordable housing predevelopment costs with NO physical impact such as legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

The RE must determine whether the activity triggers any of the other requirements at 24 CFR 58.6, which are: the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD's requirement for disclosure of properties located in airport runway clear zones.

***24 CFR 58.35(a) Categorically Excluded, Subject To §58.5 (CEST)***

The list of categorically excluded activities is found at 24 CFR Part 58.35. While the activities listed in 58.35(a) are categorically excluded from NEPA requirements, the RE must nevertheless demonstrate compliance with the laws, authorities and Executive Orders listed in 24 CFR 58.5.



The following are categorically excluded activities subject to 58.5:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size, or capacity of more than 20 percent;
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons;
- Rehabilitation of buildings and improvements when the following conditions are met:
  - For residential properties with one to four units:
    - The density is not increased beyond four units;
    - The land use is not changed; and
    - If the building is located in a floodplain or in a wetland, the footprint of the building is not increased.
  - For multifamily residential buildings (with more than four units):
    - Unit density is not changed more than 20 percent;
    - The project does not involve changes in land use from residential to non-residential; and
    - The estimated cost of rehabilitation is less than 75 percent of the total estimated replacement cost after rehabilitation.
  - For non-residential structures including commercial, industrial, and public buildings:
    - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
    - The activity does not involve a change in land use, e.g., from commercial to industrial, from non-residential to residential, or from one industrial use to another.
- An individual action on up to four-family dwelling where there is a maximum of four units on any one site. "Individual action" refers to new construction, development, demolition, acquisition, disposition, or refinancing (does not include rehabilitation which is covered previously). The units can be four one-unit buildings or one four-unit building or any combination in between;
- An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site; and
- Acquisition (including leasing) or disposition of or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use;
- Combinations of the above activities.



## ***Environmental Assessment***

Activities which are neither exempt nor categorically excluded (under each category) will require an environmental assessment (EA) documenting compliance with NEPA, HUD, and with the environmental requirements of other applicable federal laws. Guidance for completing this level of review can be found on the [HUD EA website](#) (see [Resources](#)—Resource 6.10 at the end of the chapter).

### **6.4.2 HUD Checklists**

The HUD Exchange includes various checklists intended to help subrecipient address all issues and regulations for HUD environmental review requirements. For each of these checklists, the subrecipient must respond to each element with information from a verifiable source, including state and federal agency consultations, to be included in the Environmental Review Record.

### **6.4.3 Other Types of Environmental Review and Reports**

Categorical Exclusion Converted to Exemption 24 CFR 58.34(a)(12) & 58.35(a):

Under rare circumstances the subrecipient could find their Categorically Excluded project falls under Exempt status per section 58.34(a)(12) and that none of the statutory requirements under section 58.5 apply to the project. Using the Categorical Exclusion Subject to §58.5, the subrecipient will determine if the project it is preparing to undertake can be converted to Exempt under section 58.34(a)(12).

#### **Project Re-evaluations**

Reevaluation of a project is necessary under the following circumstances (24 CFR 58.47):

- The recipient proposes substantial changes in the nature, magnitude, or extent of the project, including adding new activities not anticipated in the original scope of the project;
- There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or
- The recipient proposes the selection of an alternative not in the original finding.

The environmental review record should be updated, and the responsible entity should confirm whether the original findings are still valid. If the original findings are no longer valid, a new environmental assessment must be prepared. Please refer to the Regulatory Oversight Policy Memo on Project Re-evaluations for additional information.



### *Tiered Review*

For projects with multiple, non-contiguous locations, such as a housing rehabilitation project with work sites that are scattered throughout a county, a tiered environmental review is appropriate. For the project as a whole, complete a Broad-Level Tiered Environmental Review using the format provided on the HUD website. This review will identify which review requirements must be addressed site-by-site. For each specific site, document compliance with the review requirements identified in the Broad-Level Tiered Environmental Review. Refer to the HUD website on [Tiered Reviews](#) for additional information (see [Resources](#)—Resource 6.11 at the end of the chapter).

- The subrecipient may request a Release of Funds based on the Broad-Level review; however, the Site-Specific review must be completed prior to obligating funds for each site.

### *ASTM Phase I and II Environmental Site Assessment*

Some projects may require additional environmental review of the current and historical uses of a property when there is potential contamination to the soil or groundwater at the project site. Typically, these assessments are incorporated in the Environmental Review Record and may result in specific mitigation actions that must take place prior to the purchase of the property or the construction of an improvement. A Phase II ESA may be required depending on the findings of the Phase I report.

### *Environmental Impact Statement*

An Environmental Impact Statement (EIS) is required when the Subrecipient's Environmental Assessment results in a Finding of Significant Impact, indicating that its proposed project or activity will significantly impact the human environment. It is unlikely that a funded activity will trigger an EIS. In the event a subrecipient finds itself involved with this level of review, the subrecipient should contact their GLO-CDR Grant Manager immediately for further instructions.

## **6.5 Environmental Laws and Regulations**

The following provisions of law authorize state governments to assume HUD's environmental review responsibilities. GLO will act for HUD for environmental reviews, decision-making, and action that would otherwise apply to HUD under NEPA (National Environmental Policy Act) and other provisions of laws that further the purposes of NEPA, as specified in 24 CFR Part 58. These regulations are referenced in 24 CFR Part 58.1(b).

The foremost environmental law is the National Environmental Policy Act (NEPA) and implementing Executive Order 11514 (35 FR 4247, 3 CFR, 1966-1970 Comp., p. 902) as amended by Executive Order



11991 and the implementing regulations of the Council on Environmental Quality (40 CFR parts 1500-1508). This is not an all-inclusive list as projects can cross over into other laws and authorities not listed here. Refer to the HUD Websites on Federal Environmental Regulations (see [Resources—Resource 6.12](#) at the end of the chapter).

### NEPA

According to 42 USC § 4321, the purposes NEPA are: to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

### Executive Order 11514 & 11991

Protection and Enhancement of Environmental Quality

Executive Order clarifying the role of the CEQ and identifying the role of Federal agencies in implementing and enforcing NEPA.

### Historic Preservation Requirements

National Historic Preservation Act of 1966, 54 USC 300101 *et seq.*

Archeological and Historic Data Preservation Act of 1974, 54 USC 312501-312508

Executive Order 11593, Protection and Enhancement of the Cultural Environment

Antiquities Code of Texas, Chapter 191 Natural Resources Code

Tribal Consultation in Projects that are Reviewed under 24 CFR Part 58

### 24 CFR Part 51: Environmental Criteria and Standards

Description: This regulation provides environmental standards for determining project acceptability and necessary measures to ensure activities assisted by HUD achieve the goal of a suitable living environment. The environmental criteria include noise abatement and control and the siting of HUD-assisted projects near hazardous operations including explosives, flammables, runway clear zones at civil airports, and accident potential zones at military airfields.

### 24 CFR Part 55: Floodplain Management and Protection of Wetlands

Description: HUD regulations to implement executive order 11988 related to development in floodplains. See HUD Exchange for more information and publication requirements. Completing the required 8-step process for projects located in a floodplain or wetlands will add a minimum of fifteen (15) days to the environmental review process.

Note that although Part 55 does not contain elevation requirements for non-critical actions, projects involving new construction and substantial improvements (as defined in 55.2(b)(10)) must be elevated



or, for nonresidential structures, floodproofed to the base flood elevation of the floodplain in order to get flood insurance from FEMA.

If the project involves new construction or substantial improvement (as defined in 24 CFR 55.2(b)(10), NFIP regulations require that the affected structure(s) be elevated to the base flood elevation. State or local law or program policy may require additional elevation (or “freeboard”) beyond the minimum elevation requirements set by FEMA.

#### **Regulatory Floodways and Coastal High Hazard Areas**

A Regulatory Floodway comprises the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. This is the segment of the floodplain that will generally carry flow of flood waters during a flood and is typically the area of greatest risk to structures in the floodplain. HUD financial assistance is prohibited in floodways unless an exception in section 55.12(c) applies or the project is a functionally dependent use (e.g., dams, marinas, and port facilities) or a floodplain function restoration activity.

HUD prohibits certain construction of CDBG funded projects in Coastal High Hazard Areas, or V Zones. These are areas along the coast subject to inundation by the one percent (1%) annual chance flood event with additional hazards associated with storm or tidal induced waves. Because of the increased risks associated with V Zones, Part 55 prohibits critical actions and new construction in these areas unless an exception in section 55.12(c) applies or the project is a functionally dependent use, and otherwise requires the action to be designed for location in a Coastal High Hazard Area.

#### **24 CFR Part 58: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities**

Description: The procedures outlined in this regulation are used by entities that assume HUD's environmental review responsibilities in determining program compliance with the intent of the NEPA and other related statutes. Applicable HUD programs under this regulation include only those in which a specific statute allows governing entities to assume the federal responsibility.

#### **36 CFR Part 800: Protection of Historic Properties**

Description: The Advisory Commission on Historic Preservation Rules, used by HUD for all HUD projects.



## 6.6 Resources

The GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see [www.recovery.texas.gov](http://www.recovery.texas.gov) for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

Resource Number	Topic
Resource 6.1	<a href="#">HUD Environmental Regulation Procedures - 24 CFR Part 58</a>
Resource 6.2	<a href="#">HUD Exchange: Environmental Review</a>
Resource 6.3	<a href="#">24 CFR Part 58</a>
Resource 6.4	<a href="#">National Environmental Policy Act (NEPA)</a>
Resource 6.5	<a href="#">GLO-CDR Regulatory Oversight – Policy Memo on Choice Limiting Actions</a>
Resource 6.6	<a href="#">24 CFR 58.47</a>
Resource 6.7	<a href="#">GLO-CDR Regulatory Oversight website</a>
Resource 6.8	<a href="#">GLO-CDR Regulatory Oversight – Policy Memo on Project Re-evaluations</a>
Resource 6.9	<a href="#">HUD Memo: Environmental Review Processing During Emergencies and Following Disasters under 24 CFR Part 58 (12-11-2012)</a>
Resource 6.10	<a href="#">HUD Environmental Assessments (EA) website</a>
Resource 6.11	<a href="#">HUD Exchange: Tiered Environmental Reviews</a>
Resource 6.12	<a href="#">HUD Exchange: HUD Environmental Regulations</a>

**Note:** Individuals have reported a better experience when using *Internet Explorer or Safari* to view files.

Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).